

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TODD JOHNSON,

Plaintiff,

v.

**9:09-CV-626
(FJS/ATB)**

**CHRISTOPHER FERNANDEZ, Correctional Officer,
Coxsackie Correctional Facility; KIM GERWER,
Education Supervisor, Coxsackie Correctional Facility;
JASON YUNG, Sergeant, Coxsackie Correctional
Facility; and MARY ANN BATHRICK, Clerk II,
Coxsackie Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

TODD JOHNSON

06-A-2361

Fishkill Correctional Facility

P.O. Box 1245

Beacon, New York 12508

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

MICHAEL G. MCCARTIN, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court are Magistrate Judge Baxter's March 1, 2011 Report and Recommendation, *see* Dkt. No. 51, and Plaintiff's objections thereto, *see* Dkt. Nos. 53, 56, 60, & 61.

Plaintiff Todd Johnson, a New York State prison inmate, commenced this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants Correctional Officer Christopher Fernandez, Sergeant Jason Yung, Education Supervisor Kim Gerwer, and Calculations Clerk Mary Ann Bathrick. In his complaint, Plaintiff alleged that, during the course of his confinement at Cossackie Correctional Facility, Defendants violated his civil rights by (1) using excessive force against him in violation of the Eighth Amendment, (2) interfering with his First Amendment right to the free flow of incoming and outgoing mail, and (3) infringing upon his Fourteenth Amendment procedural due process rights during a disciplinary hearing. *See generally* Dkt. No. 1.

On June 28, 2010, Defendants filed a motion for summary judgment, in which they sought dismissal of Plaintiff's complaint in its entirety. *See* Dkt. No. 39. Plaintiff opposed that motion. *See* Dkt. No. 43. In a Report Recommendation dated March 1, 2011, Magistrate Judge Baxter recommended that this Court grant Defendants' motion for summary judgment and dismiss Plaintiff's complaint in its entirety. *See* Dkt. No. 51. Plaintiff objected to Magistrate Judge Baxter's recommendation on March 28, 2011, *see* Dkt. No. 53, and filed supplemental objections on May 5, 2011, and August 25, 2011, *see* Dkt. Nos. 56, 60; and, on September 14, 2011, Plaintiff filed another letter in further opposition thereto, *see* Dkt. No. 61.

In reviewing a magistrate judge's report and recommendation, a district court may accept, reject, or modify those recommendations in whole or in part. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)). The court conducts a *de novo* review of the portions of the magistrate judge's recommendations to which a party makes "*specific objection*[" *Trombley v. Oneill*, No. 8:11-CV-0569, 2011 WL

5881781, *2 (N.D.N.Y. Nov. 23, 2011) (citations omitted). "To be 'specific,' the objection must, with particularity, 'identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection.'" *Id.* (quotation and footnote omitted). Where, however, a party makes no objection, or only conclusory or general objections, the court reviews for "clear error" only. *See id.* (citations omitted).

The Court has thoroughly reviewed Plaintiff's objections to Magistrate Judge Baxter's recommendations and finds them to be without merit. Although Plaintiff's objections are largely conclusory and repetitive of the arguments that he made in opposition to Defendants' motion for summary judgment, the Court conducted a *de novo* review of Magistrate Judge Baxter's recommendations in light of those objections. Having completed that review, the Court hereby

ORDERS that Magistrate Judge Baxter's March 1, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

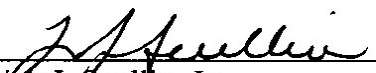
ORDERS that Defendants' motion for summary judgment is **GRANTED** in its entirety; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 27, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge